

Application No.: 10/727,287

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REMARKS

The Office Action mailed June 13, 2007 (hereinafter, "Office Action") has been reviewed and the Examiner's comments considered. Claims 1-24 are pending in this application. Claims 20 and 23-24 are canceled by this amendment. Applicant reserves the right to pursue the subject matter of these canceled claims in a future application. Claims 9-12, 14, 15, 17, and 18 are withdrawn from consideration. Claims 1, 8, 13, 16, and 19 are amended herein. Support for the amendments is provided in the original application at, for example, pp. 11-12 (paragraphs [0044]-[0045]) and pp. 14-15 (paragraphs [0050]-[0052]). Applicant submits that no new matter or issues have been introduced.

Claim Rejections - 35 U.S.C. § 112

Claims 16 and 19-20 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 16 and 19 are amended herein and claim 20 is canceled. Accordingly, Applicant respectfully requests withdrawal of this rejection.

Claim Rejections - 35 U.S.C. § 102

Claims 1, 8, 13, 16 and 19-21 stand rejected under 35 U.S.C. § 102(b) as being anticipated by USPN 6,478,783 to Moorehead (hereinafter, "Moorehead"). Claims 1, 8, 13, 16 and 19-21 also stand rejected under 35 U.S.C. § 102(b) as being anticipated by USPN 5,137,529 to Watson et al. (hereinafter, "Watson"). Claims 1, 8, 13, 16 and 19-24 stand rejected under 35 U.S.C. § 102(b) as being anticipated by USPN 4,772,270 to Wiita et al. (hereinafter, "Wiita").

Independent claims 1, 13, 16, and 21, amended herein, each include recitation generally to a port stem including a catheter retention feature and a visual indicator marking, the visual indicator marking distinct from the catheter retention feature. Each independent claim includes one or more features not shown or described by the cited art and therefore, each is believed to be patentable for at least the reasons discussed below.

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The Office Action alleges that Moorehead discloses an implantable access port with a housing (18), a port stem (32), and a marking (proximal 80). The alleged marking is described in Moorehead as, "one or more barbs 80, which, because of the compression fit, bite into the catheter tube 12 at the interior surface 82 thereof to ensure that the proximal end 34 of the catheter tube 12 does not inadvertently separate from the stem 32" (col. 3, ll. 49-53). Each of the independent claims 1, 13, 16, and 21 recite both a catheter retention feature and a visual indicator marking, the visual indicator marking distinct from the catheter retention feature. It is clear from the description of Moorehead that the barbs 80 act as a catheter retention feature. There is no other feature shown or described by Moorehead that could fairly be characterized as a visual indicator marking distinct from the catheter retention feature. Accordingly, Moorehead does not show or describe each and every element as set forth in the claims.

The Office Action alleges that Watson discloses an implantable access port with a housing (12), a port stem (62), and a marking (86). The alleged marking 86 is described in Watson as follows (underlining added for emphasis):

"A barium impregnated silicone seal tube 84 is placed over the outlet connector 62 generally adjacent to the retention knob 72 to be positioned within the outlet connector passageway 24 of the upper dome 12 and the passageway 44 of the first base member 34. The seal tube 84 is secured in place by means of a suture 86, and provides a radiopaque indicator of the orientation of the injection port 10, and specifically the outlet connector 62, when the injection port is subcutaneously implanted. The gap between the seal tube 84 and the dome 12 is filled with a silicone adhesive 88." (col. 7, ll. 23-33).

Applicant respectfully submits that a suture securing a seal tube in place over a stem is different from the claimed marking. However, even if the Examiner meant instead the seal tube 84, it is clear from the description (e.g., the underlined portions above) and FIG. 2 of Watson that the seal tube is aligned with the alleged housing 12. Each of the independent claims, differently, recite a visual indicator marking "distal of an outer edge of the housing" (claims 1, 13, 16) or "spaced

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distally from an outer edge of the housing" (claim 21). Accordingly, Watson does not show or describe each and every element as set forth in the claims.

The Office Action alleges that Wiita discloses an implantable access port with a housing (10), a port stem (82), and a marking (102). The alleged marking 102 is described in Wiita as follows:

"The tubular member 82 is illustrated as being surrounded by rigid plastic collar 100. Plastic collar 100 is formed of suitable synthetic resinous material which provides an external gripping surface 102 highly resistant to frictional displacement of other synthetic resinous materials along said surface. Extruded polyurethane and extruded polyvinyl chloride tubing respectively provide such a surface. The collar 100 is illustrated as being of uniform wall thickness spanning between an inside cylindrical surface 104 and the outside cylindrical surface 102. Surface 104 is illustrated as being of a diameter substantially the same as the diameter of the outside surface 88 of the tube 84. The collar 100 terminates in a sloped edge 106 shown to be contiguous with the surface 36 adjacent to the bore 44. Collar 100 also terminates in a blunt edge 108, illustrated as being contiguous with annular shoulder surface 97, which together with surface 94 forms barb 96. The cylindrical surface 102 has a diameter which is illustrated as being less than the diameter of the barb 96.

Applicant respectfully submits that a gripping surface is different from the claimed marking. However, even if the Examiner meant instead the collar 100, it is clear from the description (e.g., the underlined portions above) and FIG. 2 of Wiita that the collar 100 extends the entire distance between the alleged housing 10 and the barb 96, and is contiguous with a surface of each. Thus, neither the surface 102 nor the collar 100 can fairly be characterized as the claimed marking. Further, the independent claims recite a visual indicator marking "distal of an outer edge of the housing and proximal of the [a] catheter retention feature" (claims 1, 13, 16) or "spaced distally from an outer edge of the housing and proximally from the catheter retention feature" (claim 21). Accordingly, Wiita does not show or describe each and every element as set forth in the claims.

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In view of the above, Applicant submits that independent claims 1, 13, 16 and 21 are patentable over the cited art at least because none of the cited patents show or describe each and every element as set forth in the amended claims. Dependent claims 8, 19, and 22 are patentable at least because each depends from a patentable independent claim. Therefore, in view of the claims as amended, Applicant respectfully requests withdrawal of the rejections under 35 U.S.C. § 102. Further, Applicant submits that all pending withdrawn claims are dependent on an allowable independent claim and therefore requests rejoinder of the pending withdrawn claims pursuant to MPEP § 821.04

Claim Rejections - 35 U.S.C. § 103

Claims 2-7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Moorehead or Wiita.

Without conceding the propriety of the asserted rejection, Applicant respectfully submits that each of rejected claims 2-7 are patentable at least because each depends from a patentable independent claim. Therefore, Applicant respectfully requests withdrawal of the rejections under 35 U.S.C. § 103,

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

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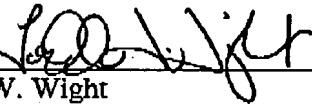
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In the event the U.S. Patent and Trademark Office determines that an extension and/or other relief is required, Applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 480062001800. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated: August 13, 2007

Respectfully submitted,

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